Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996:	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information;	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended;	)	CC Docket No. 96-149
	)	
2000 Biennial Regulatory Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	CC Docket No. 00-257

REPLY COMMENTS OF AT&T CORP.

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November 19, 2002

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Pursuant to the Commission's Third Further Notice of Proposed Rulemaking, FCC 02-214, released on July 25, 2002 ("Notice"), and section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits the following reply comments on telecommunications carriers' use of customer proprietary network information ("CPNI").[1]

In the Notice, the Commission sought comment on the CPNI implications of a carrier abandoning a market and also sought to refresh the record on the issues of (a) regulation of foreign storage of and access to domestic CPNI and (b) protections for carrier information and

[1] A list of commenters and the abbreviations used to identify them is attached as Appendix A.

enforcement mechanisms. In response, AT&T filed comments explaining that no additional notice or approval requirements are necessary for the transfer of CPNI from an exiting carrier to an acquiring carrier. AT&T at 2-8. AT&T also incorporated by reference its previous comments showing that the Commission should not restrict foreign storage of or access to domestic customer information, and that the Commission should define what constitutes section 222(b) carrier information and strictly enforce that section of the Act. AT&T at 1-2 & n.1. As explained below, a broad array of commenters support AT&T's conclusions.

I. NO ADDITIONAL NOTICE OR APPROVAL REQUIREMENTS ARE NECESSARY FOR THE TRANSFER OF CPNI FROM AN EXITING CARRIER TO AN ACQUIRING CARRIER.

The comments overwhelmingly demonstrate that the Commission should *not* impose any additional notice or approval requirements when an exiting carrier transfers CPNI to an acquiring carrier. Because customers already expect that an exiting carrier will transfer CPNI to an acquiring carrier as an integral part of their transaction, *see* AT&T at 3-4; AT&T Wireless at 6; SBC at 3; Sprint at 5; WorldCom at 3, 5, because the acquiring carrier is subject to the same CPNI rules as the exiting carrier,[2] *see* AT&T at 4; CTIA at 8; Nextel at 8, and because customers can switch carriers or CPNI elections if dissatisfied with the acquiring carrier, *see* AT&T at 7; AT&T Wireless at 7, no notice or approval is necessary to preserve the customers' privacy.[3]

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[2] As AT&T explained in its opening comments, if "the Commission believes that section 222(c)(1) is ambiguous in its application to acquiring carriers, the Commission should simply clarify that the provision imposes an obligation on acquiring carriers not to use, disclose, or permit access to individually identifiable CPNI except as permitted by that section." AT&T at 4 n.4. *See also* AOL at 8 ("The CPNI rights of customers, including without limitation the 'opt-out,' 'opt-in,' and other protections, should apply with equal force when a carrier chooses to exit the market and to sell its asset and/or customer base to a third party.").

[3] As Nextel observes, it might be sound business practice to notify customers of a change in carrier. Nextel at 8. The Commission, however, should not require this practice because there is

(footnote continued on following page)

Although there have been many instances of CPNI transfers, there is absolutely no evidence of any privacy problems associated with the transfers. *See* AT&T at 3; CTIA at 8 ("[T]here is no factual record to suggest a need for additional rules.").

Moreover, imposing additional requirements would impede the "seamless" transfer of customers between carriers. *See* SBC at 2; Sprint at 6; Qwest at 4; *see also* AT&T at 5; AT&T Wireless at 6; Nextel at 8; WorldCom at 3. As AT&T explained in its initial comments, restrictions on transfer would disrupt service, undermine the development of innovative quality products, vitiate efficiencies through integrated marketing, result in higher prices, and inhibit acquiring carriers from informing their new customers of available offerings. AT&T at 5; *see also* CTIA at 9 ("[B]y adopting special rules for CPNI the Commission could introduce customer confusion and complicate the orderly treatment of personal information . . . ."); Nextel at 8 ("Requiring 're-consent' from the customer not only would impose enormous costs on struggling carriers, but also could cause severe disruptions to the services and benefits provided to customers."). Even EPIC—the lone commenter advocating strict regulation of CPNI in the transfer context—concedes that the Commission should not impose additional approval requirements "[t]o the extent that the disclosure of CPNI is necessary" to prevent an interruption of customers' service. EPIC at 6.

(footnote continued from previous page)

no factual record demonstrating that customers need the notice in order to protect their privacy interests. A carrier should be allowed to decide for itself whether its customers would consider such additional notice to be informative or a nuisance, and whether the notice is worth its cost. Similarly, the Commission should reject Sprint's and WorldCom's suggestion that an acquiring carrier be obligated to obtain its own CPNI approvals from its new customers. *See* Sprint at 6; WorldCom at 6. Although a "prudent carrier" may consider it worthwhile to obtain these additional approvals, Sprint at 6, the carrier may also reasonably conclude that the customers would find the additional requests for approval "as a nuisance or an attempt to wear-down the subscribers who previously chose to opt-out." AT&T at 7.

The comments also confirm that the freedom to transfer CPNI should be preserved for *all* services. *See* AT&T at 6; SBC at 5 ("[T]he acquiring carrier should be able to use CPNI to provide all the services the customer previously had with the exiting carrier, not just dial tone service."); USTA at 5 ("[T]he CPNI rules should apply uniformly to all covered telecommunications services."); WorldCom at 5 ("Discontinuance of any type of telecommunications service is detrimental to consumers. Consistent with its finding in the *Carrier Change Streamlining Order*, the Commission should determine that there be no distinctions . . . based on service type."). Indeed, as a number of commenters observe, a contrary rule would violate the First Amendment. *See* AT&T at 7; Qwest at 19-21 ("It is clear that CPNI transfers implicate speech interests."); SBC at 6 ("To find otherwise and conclude that acquiring carriers can use the CPNI of acquired customers only to provide dial tone or other select services would violate Section 222(c) and run afoul of the First Amendment.").

Unsurprisingly, no commenter has offered a substantial argument for restricting the transfer of CPNI. Representing a minority of one, EPIC contends that the Commission should require opt-in approval except when necessary to preserve uninterrupted service.[4] EPIC at 2, 6. None of EPIC's contentions, however, has any basis in law or logic. EPIC asserts that privacy is a top concern of many Americans, *id.* at 3-4, but "the record also makes evident that a majority of customers nevertheless want to be advised of the services that their

[4] EPIC also argues that the Commission should preclude carriers from selling CPNI unless the buyer is a telecommunications carrier with which the customer has a current business relationship. However, with the appropriate customer consent, carriers should be permitted to transfer CPNI to *anyone*. *See* Qwest at 11-14. Nothing in the statute suggests otherwise. Indeed, section 222(c)(2) *requires* carriers to "disclose [CPNI] upon affirmative written request by the customer, to *any person* designated by the customer." 47 U.S.C. § 222(c)(2) (emphasis added); *see also* § 222(c)(1) (permitting transfer of CPNI with "the approval of the customer").

telecommunications providers offer," Third Report and Order, *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, ¶ 35 (June 25, 2002) ("*Third Report*"). Moreover, privacy is not compromised in the least by the transfer of CPNI from the exiting carrier to the acquiring carrier. Customers fully expect the transfer, and EPIC has not offered a scintilla of evidence that any previous transfer of CPNI has undermined privacy interests. Because EPIC has not shown that an opt-in requirement "directly and materially advances" privacy or "is no more extensive than necessary to serve" the interest in privacy, *U.S. West v. FCC*, 182 F.3d 1224, 1233 (10th Cir. 1999) (citation omitted), the Commission has no basis for adopting EPIC's proposal.

EPIC's statutory argument is no more availing. According to EPIC, the word "approval" in section 222(c)(1) requires opt-in approval. EPIC at 4. The Commission, however, already has rejected this argument, and EPIC offers no reason why the Commission should now do an abrupt about-face. *See Third Report*, ¶¶ 26-30.

Finally, there is no basis for treating the acquiring carrier any differently from the exiting carrier. EPIC acknowledges that the acquiring carrier has the exact same incentives not to abuse CPNI that every other carrier has. EPIC at 5. And the Commission has determined that these incentives are sufficient to eliminate the need for opt-in approval. *Third Report*, ¶ 37. EPIC's only argument is that, if an acquiring carrier were to mishandle a customer's CPNI, the customer might not be free to choose another carrier, as a competitive choice might not exist. This observation, however, does not distinguish acquiring carriers from any other carrier. As EPIC itself notes, "[t]he Commission has recognized that" competitive choices do not always exist today, EPIC at 5, yet the Commission has rejected EPIC's call for an opt-in requirement.

Because there is no evidence that acquiring carriers are more likely to abuse CPNI than are other carriers, the Commission should not impose any additional notice or approval obligations.

In any event, if the Commission were to decide that some sort of notice and opt-out approval is required, "all that is needed is an addendum to the letter that carriers already must send in order to comply with the Commission's 'authorization and verification (slamming) rules.'" AT&T at 6 (quoting Notice ¶ 146); *see also* BellSouth at 3 ("If the Commission believes that the customer should be notified of the transfer of CPNI, the Commission should amend the streamlining notice rules to include such notification in the notice that the acquiring carrier sends to the customer pursuant to 47 C.F.R. 64.1120(e)."). This addendum could inform the customers of their ability to change their CPNI approval status at any time.[5] Customers would thus "be provided a reasonable opportunity to evaluate and decide whether [they] choose[] for the new company to access [their] CPNI." AOL at 9. "Amendment of the CPNI rules . . . is unnecessary." BellSouth at 3.

II. THE COMMISSION SHOULD NOT RESTRICT FOREIGN STORAGE OF OR ACCESS TO DOMESTIC CUSTOMER INFORMATION.

As AT&T showed in previous comments, the storage of domestic CPNI abroad does not change a carrier's section 222 obligations, and thus the Commission should not restrict foreign storage of or access to domestic customer information. AT&T Reply Comments at 8-9, CC Docket No. 96-115 (filed Apr. 14, 1998). Any need the FBI may have for access to such information needs to be addressed by Congress, because addressing that need is outside the

[5] The Commission should not adopt Qwest's suggestion, Qwest at 14, of using the biennial notice to inform customers of the possibility of a CPNI transfer. Because carriers would have to raise the issue of a merger or acquisition even when no such transaction is contemplated, customers might be misled by such notices.

purview of the Commission's authority. *Id.* Every commenter who discussed this issue agrees with AT&T. *See* AT&T Wireless at 3-5; CTIA at 2-8; Nextel at 3-6; USTA at 2-3; Verizon at 2-4; WorldCom at 8-9;

III. THE COMMISSION SHOULD DEFINE WHAT CONSTITUTES SECTION 222(b) CARRIER INFORMATION AND STRICTLY ENFORCE THAT SECTION OF THE ACT.

In its initial comments, AT&T incorporated by reference previous comments demonstrating that there have been violations of section 222(b). AT&T Reply Comments, CC Docket No. 96-115, at 7 (filed Apr. 14, 1998). As AT&T noted, the Commission should thus define what constitutes section 222(b) carrier information and strictly enforce that section of the Act. Although section 222(b) is self-executing and no additional rules are needed to give it effect, *see* Nextel at 7; Sprint at 3; USTA at 4; Verizon at 4, the Commission could add clarity to the issue by providing examples of carrier information, so long as the list is not designed to be exclusive, *see* Nextel at 7. In addition, the Commission should make clear that LEC representatives cannot access the identity of a customer's provider of a particular service, unless the LEC is the service provider or billing agent for that service. *See* WorldCom at 6-8.

CONCLUSION

For the foregoing reasons, the Commission (a) should not impose additional CPNI notice or approval obligations on exiting carriers or acquiring carriers, (b) should not restrict foreign storage of or access to domestic customer information, and (c) should define what constitutes section 222(b) carrier information and strictly enforce that section of the Act.

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November 19, 2002

APPENDIX A	
Commenter	***Abbreviation***
America Online, Inc.	AOL
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AT&T Wireless
BellSouth Corporation	BellSouth
Cellular Telecommunications & Internet Association	CTIA
Electronic Privacy Information Center	EPIC
Nextel Communications, Inc.	Nextel
Qwest Services Corporation	Qwest
SBC Communications Inc.	SBC
Sprint Corporation	Sprint
United States Telecom Association	USTA
The Verizon telephone companies	Verizon
WorldCom, Inc.	WorldCom

CERTIFICATE OF SERVICE

I, Jonathan Cohn, do hereby certify that on this 19th day of November, 2002, a copy of the foregoing AT&T Reply Comments was served by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

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